



POLICE DEPARTMENT

July 21, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Felicia Simon
Tax Registry No. 929459
67 Precinct
Disciplinary Case Nos. 82064/06, 85501/09
85669/09 & 85886/09

The above-named member of the Department appeared before me on May 19, 2010, May 20, 2010 and June 3, 2010 charged with the following:

Disciplinary Case No. 82064/06

1. Said Police Officer Felicia Simon, assigned to the 67th Precinct, on February 2, 2006, in the vicinity of 241 37th Street, in Kings County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that she provided an Activity Log containing a false entry to an individual known to this Department, during an official interview.

P.G. 203-10, Page 1, Paragraph 5 CONDUCT PREJUDICIAL

2. Said Police Officer Felicia Simon assigned to the 67 Precinct, on February 2, 2006, during an official Department interview at 241 37th Street, Kings County, by IAB Group 32, pursuant to Patrol Guide 206-13, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that when questioned about the circumstances and facts surrounding an incident which occurred on 03/01/04, at approximately 0115 hours, Police Officer Simon did not reveal her true involvement in such a manner as to obfuscate her involvement therein and impede the investigation.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

3. Police Officer Felicia Simon assigned to the 67th Precinct, on March 6, 2006, in the vicinity of 241 37th Street, Kings County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that she provided an Activity Log containing a false entry to an individual known to this Department, during an official interview.

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P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

Disciplinary Case No. 85501/09

1. Said Police Officer Felicia Simon, while on-duty and assigned to the 67th Precinct, on May 15, 2009, having been assigned to guard Raylene Nicholson, a hospitalized prisoner in Kings County Hospital, Kings County, did fail to keep Raylene Nicholson under constant observation, resulting in Raylene Nicholson's escape.

P.G. 210-02, Page 3, Paragraph 22 – HOSPITALIZED PRISONERS

2. Said Police Officer Felicia Simon, while on-duty and assigned to the 67th Precinct, on May 15, 2009, having been involved in an unusual occurrence, did thereafter fail and neglect to timely report said occurrence, as required, to wit: said Officer did fail and neglect to timely report the escape of a hospitalized prisoner.

P.G. 212-09, Page 1, Paragraph 1 and 2 – UNUSUAL OCCURRENCE
REPORTS
COMMAND OPERATIONS

Disciplinary Case No. 85669/09

1. Said Police Officer Felicia Simon, while assigned to the 67th Precinct, on or about May 27, 2008, while off-duty, having become aware of an allegation of corruption or serious misconduct involving a member of the service, did fail and neglect to notify her Commanding Officer and/or the Internal Affairs Bureau Command Center as required.

P.G. 207-21, Page 1-2 – ALLEGATIONS OF CORRUPTION AND
SERIOUS MISCONDUCT AGAINST MEMBERS
OF THE SERVICES

Disciplinary Case No. 85886/09

1. Said Police Officer Felicia Simon, while off duty and assigned to the 67th Precinct, on or about June 6, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer, during a verbal dispute with Colleen Wilkinson, did grab a cellular phone out of Colleen Wilkinson's hand.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED
CONDUCT – GENERAL REGULATIONS

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through her counsel, entered a plea of Guilty to Specification Nos. 1 and 2 of Disciplinary Case No. 85501/09 and entered a plea of Not Guilty to the remaining charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification Nos. 1 and 3 and Not Guilty of Specification No. 2 in Disciplinary Case No. 82064/06. The Respondent, having pled Guilty to Specification Nos. 1 and 2 of Disciplinary Case No. 85501/09, is found Guilty of both specifications. The Respondent is found Not Guilty of the sole specification in Disciplinary Case No. 85669/09. It is recommended that the sole specification in Disciplinary Case No. 85886/09 be dismissed.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Menelique Schneider, Justin Stefano, Detective Shalay Ward, and Sergeants Joseph Competello and Christopher Connolly as witnesses.

Police Officer Menelique Schneider

Schneider has been with the Department for ten years. Schneider testified that he

is currently assigned to the 67 Precinct's school unit. He explained that he is responsible for the schools in the 67 Precinct and primarily youth offenders. Schneider testified that on February 29, 2004 he was working a "4 to 12" (1600 hours to 2335 hours) tour in sector "Michael/Nora". He stated that he was assigned to radio motor patrol ("RMP") 2064 during this tour of duty. Schneider declared that he was in RMP 2064 throughout the entire tour. He stated that at 2245 hours, he took her meal; however, because after meal his tour was ending he did not resume patrol. He testified that he had the keys to RMP 2064 during the course of his meal. Furthermore, he stated that to the best of his recollection, RMP 2064 was never out of his control during his tour [Department Exhibit (DX) 1 is two photocopied pages from Schneider's memo book¹ recording his February 29, 2004 tour].

Upon questioning by the Court, Schneider said that he did not have any recollection of what he did the night of February 29, 2004. Schneider acknowledged that his recollection of that night was based on his memo book.

During cross-examination, Schneider agreed that he did not remember anything about February 29, 2004. He agreed that an officer is supposed to keep a memo book contemporaneously with what he does so that if someone were to ask him 20 years from now where he was on that date, he could say where he was. He acknowledged that this would only be the case if the memo book were accurate. Schneider could not recall if he was the operator or the recorder on February 29, 2004. He denied that the operator/recorder information was in his memo book; however, he acknowledged that he usually does put that information in his memo book.

Schneider acknowledged that when he takes an RMP for the first time, he is

¹ Formally referred to as an "Activity Log."

supposed to inspect the vehicle for contraband. This inspection is supposed to be documented in the memo book. He said that he did not document the inspection of the vehicle on February 29, 2004. Schneider disputed the notion that the inspection not being documented in the memo book meant that he did not inspect the vehicle on that day. He stated that because he did not document the inspection in his memo book that day it was only fair to say that he did not put it in his memo book. He explained that inspecting the vehicle was something done everyday on every vehicle he is assigned. He denied that because he forgot to write about the inspection in the memo book, it was possible that he forgot to inspect the vehicle. He agreed that inspecting the vehicle was something he always did and that the memo book was secondary.

Schneider agreed that the patrol on February 29, 2004 was a "regular normal routine patrol tour." He denied that anything significant happened on that day. He agreed that it was fair to say that when things happen that are more memorable, there is a better chance of remembering them. Schneider agreed that if on the night of the tour an officer had been shot, a significant arrest occurred, he had been reprimanded by a supervisor, or there was a hurricane, he would have a better memory of the whole tour. Schneider acknowledged that since nothing happened on that night, there was nothing he could independently remember about that tour.

Schneider agreed that his tour occurred on February 29, 2004. He denied that March 1 was part of his tour because the tour finished a little before midnight. Schneider stated that he was back in the command, outside of his vehicle by 2245 hours. Schneider said he did not know what happened to the vehicle after 2245 hours. Schneider acknowledged he was working the third platoon that night. He further acknowledged that

there was a first platoon working the midnight to eight o'clock tour. Schneider agreed that there were overlapping tours occurring at 1800 to 0200 hours. Schneider stated that the car used during his tour is used by somebody else when his tour is completed. Schneider stated he did not know how many cars are assigned during the tour, but it would depend on the amount of sectors. Schneider denied that he always has the same car when he does a tour. He acknowledged that the cars are assigned randomly. Schneider testified that officers are assigned one car for their specific tour. He acknowledged that the car was assigned at the beginning of the tour. He agreed that there were circumstances where an officer may have to switch cars during his tour for example, his partner could have made an arrest and so he would have had to partner with someone else. Schneider agreed that he would not know that these circumstances would happen at the start of the tour; rather it was something that his supervisors would have to react to depending on what happened. Schneider admitted that it would be his responsibility to document in his memo book if cars were switched. He agreed that the memo book is only as accurate as to what is put in it. Moreover, he agreed that there are times when he could forget to put something in his memo book. He also agreed that not having something in his memo book does not mean the event did not occur, just that he forgot to put it in his memo book.

Justin Stefano

Stefano stated that he worked for the Civilian Complaint Review Board (CCRB) for two years investigating civilian complaints about police misconduct. Stefano is currently self-employed. He testified that he was familiar with the Respondent because

he investigated a CCRB case involving her. The CCRB case was filed in September 8, 2004 and involved a complaint by Roger Ballard, who had filed the complaint on behalf of his friend, Kim Wong. The officer involved in that case was Police Officer Eric Monaco², and the Respondent was his partner at the time. The complaint alleged that Monaco, at approximately 0100 hours on March 1, 2004, wrongfully stopped, frisked, used physical force, and was discourteous. Stefano testified that he was not initially the subject of the CCRB, but was a witness in the investigation.

During the investigation, Stefano interviewed Monaco, the Respondent, Ballard and Wong. Stefano also testified that he requested the command log, roll call, memo books, as well as the memo books of two other officers that were assigned to the RMP that was in question [DX 2 is a photocopy of the Respondent's memo book recording her February 29, 2004 tour of duty and DX 3 is Monaco's memo book entries for his tour of duty on February 29, 2004]. During a *voir dire* of DX 2, Stefano stated that the Respondent's memo book was requested on March 23, 2004 – before her CCRB interview in September 2004.

On continued direct examination, Stefano testified that he received a memo book from Police Officer Arabella [DX 4 is a photocopy of Officer Arabella's memo book entries for his tour of duty on February 29, 2004 from 1500 hours to 2335 hours]. Stefano also testified that he made a formal request through the Department for the roll call of the date in question [DX 5 is the 67 Precinct's roll call for February 29, 2004 Tour 3, which was admitted into evidence over the Respondent's objection]. Stefano testified that the roll call showed that Monaco and the Respondent were assigned to RMP 1861 and that two other officers were assigned to RMP 2064. Stefano stated this was an issue

² Monaco resigned sometime after the incident occurred. He was full duty when he resigned.

because Monaco was identified in the CCRB complaint by his name, his badge number, and RMP 1861; but, Monaco denied being in that RMP and provided his memo book to indicate that he was in RMP 2064. Stefano testified that the Respondent's memo book corroborated Monaco's claim because her memo book also stated that they were in RMP 2064.

Stefano then stated that he had made a formal request to the Department for the command log entries for the date in question [DX 6 is the 67 Precinct command log for February 29, 2004, which was admitted over the Respondent's objection]. Stefano testified that from his review of the command log he learned that on the evening of February 29, 2004, Monaco had been assigned to a different partner, Police Officer Enriquez. They had made an arrest at approximately 2000 and came back to the precinct. Enriquez stayed at the precinct to process the arrest and Monaco was reassigned to work with the Respondent in RMP 1861, and they subsequently went back out into the field.

Stefano testified that he had interviewed Monaco and the Respondent regarding the incident. Stefano stated that during his interview with Monaco, Monaco claimed that he had never encountered the CCRB complainant and that he was assigned to RMP 2064. Stefano testified that upon review of Monaco's memo book he could "clearly see under RMP 2064 that RMP 1861 was written underneath." Stefano also testified that he had interviewed the Respondent as a witness to the CCRB complaint. Stefano stated that during the interview, the Respondent consistently stated that they were in RMP 2064; however, he noticed that her memo book had "RMP 2064" written over "RMP 1861." Stefano testified that he brought these inconsistencies forward to Lieutenant Murphy at CCRB and he recommended that this information be referred to the Internal Affairs

Bureau (IAB) because of inconsistent and falsified statements. Upon questioning by the Court, Stefano testified that all of the allegations made against Monaco were substantiated.

During cross-examination, Stefano stated that he is self-employed in the digital media industry. He acknowledged that he has been doing this since he left CCRB. He acknowledged that he was at CCRB for two years. Stefano could not recall the amount of cases he worked on, but said that it was “[a] fair amount.” He agreed that he put together the same packet for each case and that each step was documented. Stefano acknowledged that he generally tape-recorded his interviews. Stefano said that during the interview with the Respondent, she had said that she was in RMP 1861. He denied that during the interview, he had said anything about the Respondent’s memo book indicating differently. Stefano acknowledged that he then questioned the Respondent about Monaco and what had happened with Wong. Stefano said that the Respondent had told him that she had no recollection of the evening at all. He acknowledged that the first thing he had asked the Respondent was, what RMP she was assigned to, and that she had answered, “1861.” Stefano admitted that the Respondent had said that it looked as though she was assigned to RMP 1861 at the beginning of her tour. He also agreed that the Respondent had no independent recollection about the date in question.

Stefano stated that his responsibilities at CCRB entailed cases involving force, abuse, discrimination, or discourtesy. He explained that he had forwarded the Respondent’s case to IAB because it did not fall under his responsibilities. He acknowledged that the allegations against Monaco were substantiated by CCRB. He stated that the initial complaint was filed by Ballard. Stefano testified that the initial

interview occurred on October 14, 2004 the complained of incident having occurred in March 2004. Stefano acknowledged that the incident occurred around 0100 hours on March 1, 2004. Furthermore, he acknowledged that when investigating a case, an investigator has to be cognizant of the fact that a tour can start on one date and end on another, for example an 1800 hours to 0200 hours tour would have start on February 29, 2004 and ended on March 1, 2004. Stefano denied that the complainant did not have the names of the Respondent and Monaco. He stated that Monaco was identified by name, badge number and RMP number; moreover, the Respondent was identified physically and by a name that the complainant believed was "Officer Smith," which was "very similar to Officer Simon."

Stefano acknowledged that Ballard filed the complaint and stated that it was filed the next day. Stefano could not recall how it had been filed. He acknowledged that Wong was the actual victim. Stefano stated that Wong had been interviewed in September 2004. Stefano acknowledged that Wong had missed a couple of scheduled appointments with CCRB. He stated that Wong was a very consistent witness when giving his statement. He acknowledged that Ballard had given a statement saying that there was a 30-minute interaction with police officers and that 20 minutes later, the officers returned and parked across the street remaining there for another 40 minutes. Stefano acknowledged that in Ballard's account, two other cars arrived. He stated that he could not recall if those two cars were identified.

Stefano acknowledged that he interviewed Wong on March 18, 2004 about the incident. Relying on his notes, Stefano acknowledged that Wong had said a female officer ran his identification and it came up that he was a member of the service and that

was why the officers let him go. He agreed that Wong had “mixed up” the RMP number as 8161. Stefano stated that he was unable to determine whether Wong’s identification had actually been run through a Department computer and did not believe he had requested documents relating to that matter. He agreed though that Ballard had also spoken of officers having run Wong’s name in a Department computer and that it “checked out.” Stefano agreed that it was fair to say that by the time he interviewed Wong, Wong had stopped working as a member of the service as a traffic enforcement agent. Stefano testified that he believed that Wong was already on some kind of disability at the time of the complaint. Stefano said that he had a chance to review the CCRB interview of the Respondent. Stefano stated that he did not keep up with his complainants and so did not know where Wong was presently, but declared that he did keep up with his cases.

Stefano acknowledged that the first time Monaco was brought in, Monaco said he was returning property to a prisoner on the day in question; however, Stefano came to realize that Monaco was reading his memo book for events of March 1, 2004. He admitted that Monaco had been telling things that were accurate about March 1, 2004. Stefano admitted that he then brought Monaco back in to discuss the details of February 29, 2004. Stefano acknowledged that Monaco had said that he did not remember the incident with Wong and that he had not had the complained of interaction with him. He also agreed that the transcript “fairly and accurately” depicted the interview between him and the Respondent [Respondent’s Exhibit (RX) A1 and A2 are the tape and transcript of the Respondent’s CCRB interview]. Stefano stated that he had not questioned the Respondent before the interview started or after it occurred. Stefano stated that he did

not do any photographic arrays of Monaco or the Respondent with Wong or Ballard.

Upon questioning by the court, Stefano testified that he received the Respondent's memo book before the interview occurred. He said that he could not recall if the Respondent knew what the nature of the allegation was when the memo book was requested.

Detective Shalay Ward

Ward stated that she has been a member of the Department for over 16 years. She is currently assigned to IAB Group 32 and investigates allegations of corruption and misconduct against members of the service. Ward testified that in September 2005, she was called upon to investigate allegations of misconduct against the Respondent. She stated that IAB was forwarded a case from CCRB in February 2005 involving allegations that the Respondent and Monaco had doctored their memo books to show that they were in an RMP that they had not been assigned to. Ward said that the case was initially assigned to Sergeant Martinez³; she received the case in September 2005.

Ward testified that investigative steps she took included retrieving copies of the 67 Precinct's command log, the finalized roll call, and conferring with the Central Repair Shop and the Fuel Control Unit. Ward stated that she conferred with the Central Repair Shop because Monaco had stated he was initially assigned RMP 1861, but did not go out in it because the car needed repairs. Ward testified that she conferred with the Central Repair Shop to see if a work order had been submitted for RMP 1861, but found that no work order had been submitted during that time.

Moreover, Ward testified that she had conferred with the Fuel Control Unit

³ Sergeant Martinez has since been promoted to lieutenant.

because during the IAB interview, Monaco said he was in RMP 2064. According to the final roll call, he was assigned to RMP 1861 and partnered with Enriquez. Enriquez had made an arrest at approximately 2015 hours. Ward testified that she then sought to find out if Monaco had received any type of fuel for RMP 1861. Ward declared that the result of the investigation revealed that Monaco had obtained fuel for RMP 1861 at 2041 hours. Ward stated that during her investigation she also found out that RMP 2064 had received fuel the day before, February 28, 2004.

Ward testified that according to the command log, the Respondent came to be partnered with Monaco at 2020 hours. The Respondent was originally assigned to work in the 124 Room, otherwise known as the complaint room. Ward stated that the command log showed that RMP 1861 had been assigned to them. Ward testified that she also reviewed the finalized roll call for February 29, 2004 and March 1, 2004. Ward stated that the finalized roll call showed that the Respondent was reassigned from the complaint room to a sector with Monaco in RMP 1861 at 2100 hours.

Ward declared that after reviewing the finalized roll calls, she received the memo books for two police officers assigned to RMP 2064 according to the roll calls: Arabella and Schneider. Ward testified that a review of their memo books indicated that they were assigned to RMP 2064 and were in that vehicle until the end of their tour. Ward declared that the memo books noted that Arabella and Schneider had their initial meal time at 2100; however, they were out on assignment so they were not able to take meal at that time. Ward stated that an official interview of Arabella and Schneider indicated that there was no break in service and no incident involving RMP 2064. Ward declared that she did not recall if she had reviewed the interrupted patrol log.

Ward testified that she was able to have an official Department interview with the Respondent on two occasions. The first hearing was on February 2, 2006 and the second on March 6, 2006. Ward stated that during the first hearing, the Respondent provided her memo book. Ward said that she questioned the Respondent in regards to the fact that a number can be seen under where the "2064" had been written. She stated that in the memo book, "an eight appears below the zero and the two appeared that it used to be a one." Ward testified that she concluded that the number "1861" was written in that space and then the Respondent wrote over it with "2064." Ward testified that she questioned the Respondent about the numbers and that the Respondent's initial response was that she was assigned to RMP 1861 and she was post changed at 2100 to RMP 2064. Ward stated that the Respondent was then given the opportunity to review her CCRB interview where she had stated she was in RMP 1861. Ward said that the Respondent then said she may have made a "mistake" in that she was assigned to RMP 1861, but may have thought she heard 2064. Ward stated that the Respondent's attorney then requested a break. Upon return from break, the Respondent said that she was actually assigned to RMP 2064 and that she made a mistake in indicating RMP 1861.

[RX B1 and B2 are the interview tape and transcript of an IAB interview of the Respondent conducted on February 2, 2006 where the Respondent said that she had been initially assigned RMP 1861, but was then told to help out at the 124 Room by a supervisor. The Respondent said that at approximately 2100 hours, she was then sent out in RMP 2064. The Respondent said that she made the 124 Room entry first and then the RMP 1861 entry, but that this was a mistake and she wrote RMP 2064 over it.]

Ward testified that during this first interview, the Respondent had stated that she

was going off what was written in her memo book and that she did not recall who she worked with until being shown the finalized roll call. Ward said that the Respondent indicated that she had worked with Monaco, but not with Arabella and Schneider. Ward also testified that the Respondent had said that she did not recall if she was in RMP 1861. Furthermore, Ward said that the Respondent had stated that she did not respond to any of the same assignments as Arabella and Schneider.

Ward stated that after the February 2, 2006 official Department interview, she did not think there was any need for additional investigative steps because they had all the information that IAB needed. Ward testified that they still brought in the Respondent for a second interview on March 6, 2006. [RX C1 and C2 are interview tape and transcript of an IAB interview of the Respondent conducted on March 6, 2006.] Ward stated she had done this because she found the Respondent's testimony confusing about whether she was assigned to RMP 1861 or RMP 2064. Ward said she wanted a final answer about what vehicle the Respondent believed she was assigned to when the incident occurred. Ward testified that at the second interview, the Respondent indicated she did not recall much about the night and that she was in RMP 2064. Ward testified that she could not recall if there was a time period where Arabella and Schneider had been on a call at the same time as the Respondent.

During cross-examination, Ward agreed that the second hearing was not to cover new ground, but to clarify what the Respondent had said prior. Ward acknowledged that the case was forwarded to IAB from CCRB in February 2005, but there was a previous investigator before her. Ward agreed that the case came to IAB a year after the incident. Ward acknowledged that it was routine and normal for CCRB to forward things to IAB

that CCRB did not cover. Ward acknowledged that CCRB gets all the documents they need for the investigation from the Department and that when CCRB forwards the case to IAB, CCRB sends along all the documents as well. Ward acknowledged that IAB was forwarded copies of the Respondent's and Monaco's memo book entries. Ward agreed that the memo books were submitted by the Respondent and Monaco because it was their responsibility under the Patrol Guide. Ward acknowledged that an officer has to give documentation to the CCRB investigator when requested. Ward also acknowledged that there was no indication that the two had refused to do so.

Ward admitted that she already had a copy of the Respondent's memo book when the Respondent was asked to come to Ward's IAB office in Brooklyn. Ward acknowledged that she asked the Respondent to still bring her originals. Ward acknowledged that an officer is not supposed to give memo book entries to anyone other than someone approved by the Department, which would be CCRB and the District Attorney's ("DA") office. She agreed that the Respondent had done the appropriate thing in giving copies of her memo book to CCRB.

Ward acknowledged that she had asked to see the Respondent's original memo book. Ward said that she did not believe that the originals had been requested prior to the February 2, 2006 interview. Ward could not recall if the Respondent's memo book had been pulled by the Integrity Command Officer (ICO). Ward agreed that it was fair to say that she would have done a comparison of the originals with the copies she was given by CCRB. Ward admitted that there were no further discrepancies between the two. Ward acknowledged that she would have kept the original memo books; however, she did not have the Respondent's book presently. She acknowledged that she did have the

Respondent's memo book already by the time of the follow-up interview on March 6, 2006. Ward agreed that there was nothing different during the follow-up interview.

Ward also agreed it was fair to say that, based on the Respondent's three interviews, she (the Respondent) did not really have an independent recollection of the March 1, 2004 incident. Ward stated that the Respondent would say that the information she was providing was from her memo book; however, the information about being reassigned by a supervisor at the roll call to go help complainants in the 124 Room was not in her memo book. Ward agreed though that the Respondent's memo book does say she was assigned to the 124 Room at some point. Furthermore, Ward agreed that the command log showed that the Respondent was tasked for some kind of precinct function. Ward acknowledged that it was not inconsistent that she was assigned to the 124 Room. Ward agreed that the Respondent had stated that she was assigned to the 124 Room by a supervisor. Ward acknowledged that the Respondent had said she did not remember the supervisor that had assigned her to the 124 Room. Ward agreed that the Respondent did not have an independent recollection of being at the precinct – that “she was just going from her memo books and her common practice.”

Upon questioning by the Court, Ward declared that she had made attempts to interview Wong and Ballard, but could not locate them. Ward testified that the Respondent and Monaco would not have been off duty by 0100 hours on March 1, 2004 because their tour was scheduled to end at 0205 hours.

During re-cross examination, Ward said she was not able to get in touch with Wong because he “went back to his country.” Ward acknowledged that the Respondent and Monaco were working an 1800 hours to 0200 hours tour, which is actually from 1930

hours to 0205 hours. She agreed that the incident with Wong occurred at approximately 0110 hours. Ward could not recall if the incident took place for 30 minutes, followed by a 40-minute period where the police stayed and watched Wong. Ward acknowledged that Wong's information was run in a Department computer. Ward stated that she was not able to corroborate this allegation. Ward declared that she did check to see if Wong's name had been run in the system, but his name had not been queried. She acknowledged that if his name had been entered into the computer, IAB would know about it.

Sergeant Joseph Competello

Competello has been with the Department for ten years and is currently assigned to IAB. Competello declared that his duties and responsibilities were to investigate allegations of corruption and police misconduct. Competello acknowledged that in April 2008, he was assigned to investigate an incident involving Police Officer Shondel Garnett. He explained that this investigation was about an incident that occurred on March 21, 2008 at the Vesta Club in Manhattan. On April 1, 2008, Sergeant Latooga from the Midtown South Precinct contacted IAB and stated that there was an assault and stabbing where Garnett was allegedly involved.

Competello testified that he conferred with the Manhattan DA's office. He explained that Assistant District Attorney ("ADA") Al Peterson was assigned to the case and that IAB looked into who the witnesses were. After a review of the initial case, it was determined that witnesses at that point were going to be called in to speak to the Manhattan DA's office. Competello explained that the attorney wanted information from some of the witnesses. Competello stated that one of these witnesses, Colleen Wilkinson,

said that the Respondent was involved with the case. Competello acknowledged that he was present when Wilkinson was interviewed about the Respondent's alleged involvement in the incident. Competello stated that during the interview it was revealed that on the night of the incident, a phone call was made to the Respondent while she was with Wilkinson from Kerry Ann Thomas. Competello explained that Thomas called to elaborate about the assault and stabbing that night.

Competello stated that he and the ADA conferred about having the Respondent come in for an interview at the DA's office. He explained that the attorney issued a subpoena, which was given to Competello to serve to the Respondent. Competello testified that after a series of background checks, the subpoena was served. Competello stated that the Respondent was not personally served with the subpoena. Competello testified that he could not recall the date or month that the Respondent was interviewed by the ADA. Competello stated that he had conferred with the ADA after this interview with the Respondent. Competello said that the ADA did not feel that the Respondent had participated in the assault and that the Department should proceed administratively with the case. Competello explained that the ADA was not going to pursue anything criminally against the Respondent because he had felt that she was not a participant in the assault and stabbing.

Competello said that after the Respondent's interview with the ADA, he conducted background checks into the Respondent, standard Internal Affairs/Professional Standards (IAPRO) checks, Personnel Profile (PEPR) checks, CCRB checks, and the Respondent was eventually called in for an official Department interview. Competello said that during the official Department interview, the Respondent stated that on the night

the assault occurred, she had been invited to go to Garnett's party, but did not go. She stayed home that night with Wilkinson. Competello said that he asked the Respondent if she had spoken to anybody after she had been called in by the Manhattan DA's office, and she had said that Garnett had contacted her. Garnett had said that she had heard that something was happening with regards to her and if the Respondent knew anything about a stabbing. Competello said that during the hearing, the Respondent had stated that she told Garnett that she had no knowledge of any stabbing, but she should contact her delegate. Competello then asked the Respondent if she had notified IAB after becoming apprised and aware that another member of the service was allegedly involved with misconduct as required by Patrol Guide procedures. Competello said the Respondent declared she had not. Competello stated that the Respondent had not notified her commanding officer either.

Upon questioning by the Court, Competello explained that the violation of the Patrol Guide was not that the Respondent had not contacted IAB after being interviewed by the ADA, but that she had advised Garnett to contact a delegate. By advising her to contact the delegate, the Respondent became aware and apprised of potential misconduct by another member of the service and should have notified IAB.

During cross-examination, Competello acknowledged that as an IAB representative, he knew as early as April 1, 2008 that Garnett was the subject officer in a possible assault. Competello stated that Garnett and the Respondent were neither arrested for any stabbing nor identified as having stabbed anyone regarding the March 21, 2008 incident at Club Vesta. He acknowledged that Garnett was a possible suspect. Furthermore, Competello acknowledged that Garnett could have been a participant, a

witness, or something in between. Competello agreed that this case had come to him from the Midtown South Precinct, where it was being investigated by Detective Grogan and Sergeant Latooga. He acknowledged that the detective investigating the incident was only looking into the stabbing aspect, and part of what they had done was check the identification of those individuals going into Club Vesta. Competello explained that the club scans the licenses of each person that enters and at the end of the night there is usually a printout of who attended the club. Competello could not recall what form of identification Garnett had used to enter the club, but there was a record showing that Garnett had went into the club. Competello stated that a witness, Debra Crowder, had contacted Midtown South on April 1, 2008 and stated that Garnett was involved, whereupon Midtown South Precinct contacted IAB. Competello agreed that it was fair to say that IAB was aware that Garnett was involved in a stabbing as early as April 1, 2008. Competello stated that IAB then took over the investigation into the stabbing and he was in charge of the investigation.

Competello acknowledged that he spoke to the Respondent during an official Department interview. He acknowledged that he was present during the interview. Competello acknowledged that he had delivered the subpoena from IAB to her house, but that it was given to the Respondent's mother – he did not serve the Respondent personally. He could not recall if he had identified himself and his coworkers as members of IAB, but did believe that they had identified themselves as members of the service. Competello agreed that he did not have to go to the Respondent's house, but could have served the subpoena at work. Competello explained that he went to her house because he did not know that she was not home at the time. Furthermore, he was given a

series of subpoenas and he had been instructed to deliver them. Competello said that he did not recall if, during the official Department interview, his serving the subpoena at the Respondent's house came up. He denied he would try to hide that fact at any time.

Competello acknowledged that he was not present when the Respondent was interviewed at the DA's office. Competello said that the ADA did not want him present at the interview because he was looking into the criminal aspect of the incident. Competello stated that after the interview, the ADA told him that the Respondent had not been involved and was not going to pursue her criminally. Competello did not know if the ADA had instructed the Respondent not to tell anyone about the investigation.

Moreover, Competello did not know if it was normal for the ADA to tell a witness that he is interviewing not to give anybody else "the heads up."

Competello acknowledged that he had listened to the taped official Department interview of the Respondent conducted on August 18, 2009. Competello acknowledged he was present for all the questions of the Respondent. He could not recall who the other male voice was on the tape. Competello said he remembered the Respondent saying during her interview: "The attorney told me not to say anything so I gave my word and I said I am not going to say anything." Competello said that he did not verify with Peterson if he had told the Respondent not to say anything to anyone about the case. Competello said that he had no reason to believe that he did not say this to the Respondent.

Competello acknowledged that he was trying to maintain a level of confidentiality in his investigation regarding the incident. He explained that all investigations by IAB involve a degree of confidentiality. Competello acknowledged that someone had been

arrested for the stabbing, but the case was dismissed. Compettello could not recall if, during the official Department interview, the Respondent had said that Garnett's name came up in her conversation with the ADA. He acknowledged that, given what he knew about the investigation, the Respondent was a potential witness to the stabbing. He agreed she would not be a witness to the actual event, but because there were phone calls made and her name was mentioned, the ADA wanted to bring her in to find out what she knew. Compettello acknowledged that one of the things the ADA was investigating was Garnett's role in the stabbing. Compettello said that because he was not present at the ADA's interview, he did know if Garnett had come up in that interview.

Furthermore, Compettello said that he had not spoken to the ADA afterwards to find out whether the ADA asked the Respondent about Garnett. Compettello also said that the ADA had not asked for any follow-up interviews with the Respondent and had not asked IAB to take any investigative steps regarding criminal charges against the Respondent. Compettello acknowledged that at some point during the official Department interview, he asked the Respondent if she had spoken to Garnett. He agreed that Garnett and the Respondent were casual friends. He acknowledged that while the Respondent had not known the date, Garnett had called sometime after the Respondent met with the ADA. Compettello acknowledged that he asked the Respondent about the substance of the conversation between the Respondent and Garnett. Compettello agreed it was fair to say that during the official interview, the Respondent admitted that Garnett said she thought IAB was investigating her about a stabbing.

Compettello stated that when the Respondent was told that Garnett was being investigated by IAB for a stabbing, the Respondent's failure to notify IAB constituted

misconduct. Competello explained that Garnett telling the Respondent made the Respondent aware of misconduct, which IAB should have been notified about. Competello agreed that he, as a member of IAB dropped off the subpoena to the Respondent. He could not recall if the subpoena had stated that she was wanted as a possible witness in a stabbing.

Competello disputed the idea that the interview at the DA's office was in regards to the stabbing. He explained that the interview at the DA's office was in regards to the investigation about the assault at Club Vesta. Competello acknowledged that the DA's office knew Garnett was a possible participant and was near where the stabbing occurred. He acknowledged that the Respondent knew that Garnett was being investigated because she had been interviewed at the Manhattan DA's office where she was told that Garnett was being investigated. Competello said that during the Respondent's official Department interview, she did not say that she had said to Garnett that the DA's office was investigating her. Competello said that the subpoena was issued by the Manhattan DA's office. He acknowledged that IAB delivered the subpoena. He agreed that it was possible for the Respondent to know that IAB was aware of the investigation by the DA's office.

Competello acknowledged that if Garnett had called saying that she was in the middle of a stabbing or that she had stabbed someone, Garnett would be announcing to the Respondent that she committed some kind of misconduct. Competello testified that Garnett had said, "I think IAB is looking at me for a stabbing," to which the Respondent had said she knew nothing. Competello stated that since the Respondent advised Garnett to seek a delegate, the Respondent must have assumed that Garnett had committed or

possibly committed some form of misconduct. Competello testified that because the Respondent would be assuming this and the Patrol Guide states that based on “any misconduct or possible corruption” IAB should be notified immediately, that assumption would thus require a notification.

Competello acknowledged that he knew Garnett was being investigated for a stabbing. He admitted that the Respondent had to tell him something that he definitely knew already. Competello testified that when the Respondent left the Manhattan DA’s office, she could have contacted IAB about the ADA looking into Garnett. He stated that if the Respondent was aware that another member of the service was involved in some type of misconduct or corruption, she should have erred on the side of caution and contacted IAB. Competello stated that the Respondent was first questioned about not contacting IAB during her official Department interview, whereupon the alleged misconduct was noted. He acknowledged that the official Department interview occurred on April 18, 2009. Competello acknowledged that it was the first time she had told him about Garnett informing her that she believed she was under investigation. He agreed that he already knew that Garnett was already under investigation. Competello said that the investigation against Garnett was not effected as a result of the Respondent’s actions.

Sergeant Christopher Connolly

Connolly stated that he has been with the Department for almost 14 years. He said that he is currently assigned to Brooklyn South Investigations. He testified that his duties and responsibilities as a sergeant in that command are to conduct confidential investigations. He stated that on June 18, 2008, he was assigned to investigate a case

concerning the Respondent. He explained it was a domestic incident involving the Respondent and her girlfriend, Wilkinson. Connolly testified that when he was assigned the case, he reviewed the UF-49⁴ prepared by the duty captain that night, Captain Venice.

Connolly testified that according to the UF-49, officers from the 70 Precinct responded to Wilkinson's residence. The officers were met by Lieutenant Habernacky, also from the 70 Precinct. Once there, they encountered the Respondent and Wilkinson who each separately informed the officers that they had not called 911. The Respondent and Wilkinson were brought back to the 70 Precinct for further investigation conducted by Venice. Connolly said that both reiterated that they had not telephoned 911. It turned out that the 911 caller was a Ms. Crowder, a relative of Wilkinson. Connolly stated that Wilkinson appeared to be uninjured. He said that there was a dispute perhaps over infidelity and that during the dispute, there was an argument over a cell phone.

As a result of this incident, Connolly conducted an official Department interview of the Respondent. Connolly testified that during the hearing, the Respondent said that she had gone to see Wilkinson to "break up." The Respondent said an argument ensued over the cell phone and she admitted to attempting to grab the cell phone from Wilkinson.

During cross-examination, Connolly acknowledged that the case came to him after the original call out. Connolly acknowledged that the duty captain, Venice, recommended that no action be taken against the Respondent and that the case be deemed closed. He acknowledged that Venice did not change anyone's duty status. Connolly stated that the case was referred to him because in his experience, even though there may be a recommendation for no further investigation, the case is always sent down to the respective investigative unit or IAB for further investigation.

⁴ Department memorandum

Connolly admitted that he was aware of an escaped prisoner case going on with the Respondent; however, he was not involved in that investigation. He acknowledged that the escaped prisoner case was incorporated into his domestic incident investigation.

Connolly acknowledged that neither party called 911 on June 18, 2008, but that it was Wilkinson's aunt who had called from an outside location. He admitted that the aunt was not a witness to the dispute. He agreed that the aunt called and said that something was occurring at Wilkinson's home and asked that someone go to check it out. He acknowledged that when the officers responded, the Respondent identified herself immediately. Connolly agreed that the Respondent had said that they were just arguing, but did not call the police.

Connolly said that during the Respondent's official Department interview, she had said she was arguing with Wilkinson, who was talking to someone else on the phone and that she grabbed the phone out of Wilkinson's hand to see who she was talking to. Connolly said that he did not have information about whether Wilkinson fought over the phone or that the argument escalated from there. He said it was fair to say that the Respondent grabbed the phone from Wilkinson and that was it. Connolly said that neither the Respondent nor anyone else demonstrated how the Respondent grabbed the phone. Connolly agreed that if Wilkinson had been attempting to dial 911, grabbing the phone out of her hand would be a different level of misconduct. He also agreed that if Wilkinson were attempting to call someone else for help, it would also be different. Connolly stated that Wilkinson had not been attempting to call 911, but was speaking to another individual.

Connolly agreed that he handles cases that do not quite reach the IAB level or

would constitute a crime, but might still be considered misconduct. He did acknowledge that some of his cases have become criminal. Connolly testified that the misconduct that he believed the Respondent committed was that she grabbed the cell phone. Connolly stated that he did not speak to Wilkinson. Furthermore, he said that he did not make attempts to reach Wilkinson.

During redirect examination, Connolly explained that he did not attempt to reach out to Wilkinson because Venice had previously interviewed her. He decided not to reach out to her again because in the interview, the Respondent admitted that she grabbed the cell phone out of Wilkinson's hand. There were no allegations by Wilkinson. Connolly said that when the complainant is interviewed beforehand, sometimes a second interview does not occur. Connolly stated that he could not remember off hand how many cases he has had similar to the Respondent's.

The Respondent's Case

The Respondent testified in her own behalf.

The Respondent

The Respondent testified that she has been a police officer with the Department for eight years and has worked in the 67 Precinct her entire career. The Respondent stated that she generally works 0705 hours to 1540 hours conducting uniformed patrols. The Respondent testified that she has made over 300 arrests in her career. She stated that her last arrest was made a week before testifying for this trial. The Respondent said that the arrest was for petty larceny. She stated that she has worked in the precinct anti-crime

and conditions units.

The Respondent said that she had been interviewed at CCRB regarding an incident that allegedly occurred on March 1, 2004 involving her and Monaco. The Respondent agreed that it was safe to say the interview with CCRB occurred sometime in 2004. The Respondent testified that she could not remember if Monaco had come with her to the CCRB interview. The Respondent testified that she also could not remember why CCRB had asked her to come in for an interview. The Respondent stated that she was questioned about some allegations against her partner, Monaco.

The Respondent said that CCRB asked her about the March 1, 2004 tour, which started on February 29, 2004. She stated that at that time, she was doing a “6 to 2,” which started at 1730 hours and ended at 0205 hours. The Respondent testified that during the interview she did not remember anything about the tour. She said that she had looked at her memo book that day, but nothing in it refreshed her recollection as to events that happened. Moreover, the Respondent said that nothing the investigator told her about the tour in question refreshed her recollection as to what had happened. The Respondent said that she remembered being asked about a complaint made by Wong, but could not recall the details about the allegations made or the claims ever happening. The Respondent testified that she could not recollect anything in the past regarding Monaco or him throwing an individual up against a wall in front of a laundromat. The Respondent said she could not recall if she had run Wong’s license or information in a computer.

The Respondent said that when she went to the CCRB interview, CCRB requested a copy of her memo book for February 29, 2004 and March 1, 2004. The

Respondent declared that to the best of her knowledge, an ICO asked her to pull certain dates from her memo book before the CCRB interview, but she did not know if those copies were sent over to CCRB. The Respondent said that when she has no independent recollection of the day, looking at her memo book helps her remember what she was actually doing that day. The Respondent stated that after looking at her memo book entries for the “6 to 2” tour starting on February 29, 2004, she could remember February 29, 2004. The Respondent stated that when she started her tour, she was assigned to the 124 Room and then assigned to RMP 1861 by a supervisor. She said she could not remember who the supervisor was, but if she was assigned an RMP it must have been by a supervisor. She also stated that while she could not remember which supervisor assigned her to the 124 Room, a supervisor would have had to assign her there because she would not have done it on her own. The Respondent testified that she did not put down the names of the supervisors who had assigned her to the 124 Room or to RMP 1861.

The Respondent stated that around 2100 hours, she was reassigned from the 124 Room to RMP 2064. She declared she could not recall who she was working with on that day. She testified that her memo book did not state who she was assigned to on that day. The Respondent stated that as she sat on trial, she knew that Monaco had been her partner on February 29, 2004 into March 1, 2004. The Respondent stated that her memo book had “2064” written over “1861” because at the beginning of the tour she had been assigned to RMP 1861, but she was post changed to RMP 2064 that same day. The Respondent stated that she fills out her memo book at the beginning of the tour and as the day goes on. She said that she did not wait two or three days to fill out her memo book.

The Respondent said that writing “2064” over the “1861” occurred at 2100 because she was reassigned to RMP 2064 at 2100 hours on February 29, 2004. The Respondent testified that she did not go back and write “2064” over “1861” anytime after 2100 hours. She testified that months later when she was asked to go down to CCRB to provide her memo book, she did not go back and write “2064” over “1861.” She testified that the proper way to make a correction in her memo book was to cross out and initial the error and write the correction above. The Respondent testified that she was not trying to fool anyone when she wrote over “1861.”

The Respondent said that after her CCRB interview, she was brought down to IAB on February 2, 2006 for an official Department interview. The Respondent said that IAB made her aware of allegations against her. She stated that she was ordered to bring her memo book, the same memo book that she had provided to CCRB a year before the IAB interview. The Respondent testified that she brought the memo book, and IAB had a copy of her memo book already. The Respondent declared that at that time, she did not believe there were any false entries in that book. The Respondent said that she had not created any false entries prior to the IAB interview. The Respondent testified that during her official Department interview, she did not have an independent recollection of what had happened on February 29, 2004 into March 1, 2004. Moreover, she could not recall anything significant that happened on that day.

The Respondent testified that she said she worked in the 124 Room because that is what she had written in her memo book; however, she could not remember what had happened in the 124 Room. She said that she was assigned to the 124 Room that day to help take complaints. She testified that there would be other reasons why an officer

would be assigned to the 124 Room. She said that a supervisor had assigned her there, but she could not remember who. The Respondent said that during her official Department interview, she answered the questions to the best of her abilities.

The Respondent said that she had no independent recollection of any incidents occurring between Monaco, Wong, and Ballard. The Respondent said that she could not remember being in a car with Monaco and having someone curse at the car. The Respondent said she could not remember Monaco grabbing anyone or her taking someone's identification and running it on his behalf. She could not remember staying in a place with Monaco arguing with Wong for 30 minutes. She could not recall any other cars coming to back up her and Monaco.

The Respondent could not recollect being in the area where the alleged incident occurred, which is in front of a laundromat bordering the 67 and 73 Precincts. The Respondent said that her memo book did not indicate that she had been in that area. The Respondent stated that her tour ended at 0205. The Respondent stated that she could not tell from her memo book when she was back at the precinct building, but it was her practice to write down "end of tour" when she was physically at the precinct.

The Respondent said that on March 6, 2006 she had a second interview with IAB regarding the incident. She declared that she was again asked to bring her memo book. She stated that she still had the memo book with her at that time. The Respondent said that was the last time she saw her memo book because IAB took it into evidence. The Respondent testified that it was the same memo book she had brought to IAB on February 2, 2006 and to CCRB on a prior date. The Respondent declared that she did not alter the February 29, 2004 entry in her memo book at any point. The Respondent stated

that during the second IAB interview, she answered questions to the best of her abilities despite having no independent recollection of what happened on the date in question.

The Respondent explained that her memo book indicated RMP 2064 while roll calls and other people's memo books describe otherwise because at the beginning of her tour she was assigned to RMP 1861 and then post changed to RMP 2064, therefore it was possible that she wrote the wrong RMP number in her memo book.

The Respondent testified that after being interviewed by IAB on February 2, 2006, she went from anti-crime duty to regular patrol. She stated that she was not taken off of enforcement duty in the precinct. The Respondent stated that of her over 300 arrests, over 200 were made since her February 2, 2006 interview by IAB.

The Respondent testified that she was served a subpoena in May 2008. The Respondent stated that she first got the subpoena from her mother whom she was living with at that time. The Respondent said that her mother said two individuals came to the house and gave her the subpoena. The Respondent said her mother was told to take down their names and to tell the Respondent to contact them. The Respondent said that the name that was given to her mother was, Sergeant Competello. The Respondent testified that the subpoena said that she was a witness to a stabbing. The Respondent said that Competello and ADA Peterson wanted to talk to her. She said that the subpoena did not give a date or time to appear.

The Respondent stated that she responded to the subpoena and went to the Manhattan DA's office. She said that she went by herself to meet with the ADA and she did not bring representation. The Respondent said that the ADA asked her about an incident that had occurred on the night of March 21, 2008 involving a stabbing. The

Respondent said that she told the ADA that she did not know anything about a stabbing. The Respondent said that she affirmed knowing certain individuals the ADA asked her if she knew. The Respondent said that the ADA then asked if she was supposed to go out the night of the stabbing, which she also affirmed.

The Respondent explained that it was Garnett's birthday and everybody wanted to go out and celebrate. The Respondent declared that she has known Garnett for over ten years and are casual friends. The Respondent testified that she was supposed to go out that evening, but did not make it. The Respondent explained she stayed home with her girlfriend, Wilkinson. The Respondent said she did not know where the individuals were going for the birthday, only that it was to a club. The Respondent agreed it was fair to say that the ADA knew a lot of facts about that night. The Respondent said that the ADA asked her if she received any phone calls from individuals who had gone out that night to the club after the evening or the next morning of the stabbing. The Respondent said that she told the ADA that she had received calls asking why she had not come out. She had told them she had fallen asleep and asked them how the party was.

The Respondent said that one of the callers said that the party was at a gay club where a couple, Kerry Ann Thomas and Carol McCaughly were present. The Respondent said that she was told a man grabbed McCaughly's "butt." The Respondent said that no one had said that this resulted in a fight or a stabbing. The Respondent declared that nobody told her anything beyond the fact that somebody had grabbed somebody else. The Respondent stated that she told this to the ADA. The Respondent said that the ADA was interested in Garnett because she was present at the stabbing. The Respondent said that it was fair to say the ADA told her that he was investigating

Garnett. The Respondent stated that the ADA said that IAB was involved and that IAB knew everything already. She said that the interview was approximately one hour long.

The Respondent testified that the ADA ordered her not to say anything to anyone because the case was under investigation. The Respondent said that she promised the ADA not to tell anyone after the interview and that she followed through on that promise. The Respondent stated that the ADA did not accuse her of any wrongdoing. She said that at some point after the ADA interview, she spoke to Garnett on the phone, which was not unusual. She said that she talked to Garnett around birthdays and holidays. The Respondent said that Garnett asked her if she knew anything about IAB looking for her about a stabbing. The Respondent said that she did not confirm Garnett's suspicions about IAB looking into her about a stabbing nor say that she had just been at the DA's office. The Respondent explained that she told Garnett this because the ADA had told her not to say anything. The Respondent stated that she believed that IAB was looking in to Garnett at the time Garnett called her. The Respondent said that she did not tell IAB or her commanding officer that Garnett had called. She explained that when she spoke to Peterson, he had told her that IAB already knew about the case and for her not to say anything. The Respondent said that the Garnett had at no point made any admission about misconduct or being involved in a stabbing.

The Respondent testified that Wilkinson was her girlfriend on June 6, 2008. The Respondent declared that Wilkinson had been her girlfriend of one and a half years at that point. The Respondent stated that on June 6, 2008, she was with Wilkinson inside Wilkinson's apartment. The Respondent testified that she had gone to see Wilkinson to end their relationship. She said that when she arrived at Wilkinson's apartment a

discussion occurred in the living room. The Respondent stated that she was standing up and Wilkinson was seated. Wilkinson picked up her cell phone and was about to call someone else to get involved in their "business." The Respondent said that she took the cell phone out of Wilkinson's hand and asked, "Can we just talk about it?" The Respondent testified that she did not know who Wilkinson was going to call. The Respondent then stated that she took the phone out of Wilkinson's hand and put it down on the coffee table, which was near where Wilkinson was sitting. The Respondent denied that she pulled the phone out of Wilkinson's hand. The Respondent said that Wilkinson did not try to grab it back or say anything when the phone was taken. The Respondent said that Wilkinson did not react violently in anyway.

The Respondent said that during the verbal argument between her and Wilkinson, the police responded. The Respondent said that neither she nor Wilkinson had called the police. Moreover, she stated that she was not aware of any neighbors calling the police. The Respondent stated that she later found out that Wilkinson's aunt, Deborah Crowder, had called the police. The Respondent testified that she did not have any relationship with Crowder and that while she did not know her, she did know of her. The Respondent said that Crowder did not like her at all and that there was animosity between them. The Respondent testified that when the police arrived, she identified herself. She said that she spoke to a supervisor from the Department on the scene about what happened that day. The Respondent said that Wilkinson also spoke to the same supervisor that same day. The Respondent stated that no action was taken against her, she was not put on modified assignment, and she was not suspended. The Respondent declared that there were no further incidents with Wilkinson afterwards.

The Respondent testified that she was working on May 15, 2009 and was assigned to guard a prisoner, Raylene Nicholson. Nicholson and her boyfriend had been arrested for criminal mischief on a cross-complaint. The Respondent said that Nicholson had gone to the hospital to get “cleared” because she had a large bump on her forehead. The Respondent testified that she did not expect Nicholson to be admitted into the hospital. The Respondent said that Nicholson had some type of argument with the nurse. The Respondent said that as a result of the argument, the nurse was punishing Nicholson by making her wait.

The Respondent said that she just wanted to get Nicholson cleared and get her back to the precinct because her supervisor had told her to get Nicholson “in and out.” The Respondent said that she then went to try and “make peace” with the nurse and apologized, asking if they could be moved up in the process and not pushed to the back. The Respondent testified that she secured Nicholson by handcuffing her to the chair with one hand. She stated that Nicholson was out of her sight for only a couple of seconds. The Respondent said that during this time, Nicholson pulled her hand out the handcuffs and ran out the back door.

The Respondent said that she tried to look for her, but did not transmit over the radio that a prisoner escaped. She said that she only called the sergeant over the radio because she was embarrassed about losing a prisoner. The Respondent declared that she tried to call the sergeant over the radio “pretty quickly” after the prisoner escaped. The Respondent testified that she asked the sergeant to come to the hospital, but did not say that she had lost the prisoner. The Respondent explained that she was going to ask the sergeant to help look for Nicholson when he arrived; however, the lieutenant came

instead. The Respondent said that five minutes elapsed from the time that the prisoner escaped to when the lieutenant arrived. When the lieutenant arrived, the Respondent told him what had happened. The Respondent said that the lieutenant told her to transmit over the radio that a prisoner had escaped.

The Respondent testified that in retrospect she should have transmitted over the radio that the prisoner had escaped the moment she realized it. The Respondent reiterated that she did not do this because she was embarrassed. The Respondent said that she thought that she was going to be able to catch Nicholson by herself. After the incident, the Respondent went back to the precinct where, subsequent to an official Department interview, her gun and shield were taken from her and she was suspended. She said that after being suspended, she gathered her belongings and as she was leaving the precinct, other officers were bringing Nicholson back in. The Respondent testified that the prisoner she had lost was captured by the time she was suspended. The Respondent said that she was suspended for “approximately 18 days” and when she came off of suspension, she was returned to full duty. The Respondent testified that she had never been on modified assignment and, other than the escaped prisoner incident, she has been full-duty her entire eight-year career with the Department.

During cross-examination, the Respondent acknowledged that she reviewed her official Department interviews and CCRB interviews from 2004 prior to testimony. She acknowledged that she listened to the testimony presented during trial. The Respondent acknowledged that aside from information about being assigned RMP 1861 during her tour of duty on February 29, 2004, she could not remember anything else about that tour. The Respondent agreed that her memo book did not refresh her recollection of that tour

either. The Respondent acknowledged that when her tour changed at 2100 hours, she could not really remember which RMP she was in. The Respondent explained that at the beginning of the tour she was assigned to RMP 1861, but then she was post changed. The Respondent stated that she possibly could have put the wrong RMP number in her memo book. The Respondent acknowledged that it was possible that she could have written down "2064" by accident on that date. Furthermore, the Respondent acknowledged that it was possible that she could have been in RMP 1861 on February 29, 2004. The Respondent acknowledged that she had testified earlier that any changes in her memo book would have been made on the same date; and that the proper procedure to make changes was to cross out the error, write the correction on top, and initial. The Respondent said that she did not use the proper procedures on February 29, 2004 to make corrections. The Respondent acknowledged that she was brought down to the IAB twice for two official Department interviews. The Respondent agreed that she was presented her memo book to the investigators on both dates. The Respondent acknowledged that during the interview, she continuously referred to her memo book entries to help refresh her recollection. She admitted stating that on both occasions everything she was remembering or what she was testifying to, was based on what she had written down in her memo book.

The Respondent denied that there was a possibility that during her tour she did not put a job she responded to into her memo book. The Respondent acknowledged hearing testimony that there were other officers assigned to RMP 2064. The Respondent agreed that at 2100 hours, while she was post changed and assigned to RMP 2064 according to her memo book, other officers assigned to RMP 2064 were responding to another job.

The Respondent explained that it was possible that she could have written down the wrong RMP in her memo book in order to account for the fact that there would be one car with four people. The Respondent said that she could not remember actually being in RMP 1861, but was assigned to it at the beginning of the tour. The Respondent said she could not remember denying during an official Department interview on March 6, 2004 that she was ever in RMP 1861 on February 29, 2004. The Respondent said that she had no other explanation for the discrepancy in her memo book other than it being a mistake.

Regarding the phone conversation with Garnett, the Respondent acknowledged that the first time she learned of the alleged stabbing was when she was served with the subpoena to speak at the DA's office. She acknowledged that she was not personally served that the subpoena. The Respondent admitted that she had a phone conversation with Garnett sometime after the interview at the DA's office. She said that Garnett asked her if she knew anything about IAB looking for her. The Respondent acknowledged that she told Garnett that she did not know anything about a stabbing, but that she should speak to a delegate. The Respondent acknowledged that at no time did she contact her commanding officer or IAB after the conversations. The Respondent testified that the subpoena from the DA's office said that she was a witness to a stabbing.

Regarding the incident with Wilkinson, the Respondent acknowledged that she had gone to Wilkinson's residence to "break up" with her. The Respondent acknowledged that while she was speaking with Wilkinson, Wilkinson decided she was going to make a phone call. The Respondent agreed that she was upset because she suspected Wilkinson of being unfaithful. The Respondent admitted that she also got upset when Wilkinson was going to make a phone call during their conversation instead

of speaking with her. The Respondent said that she did not “grab” the cell phone out of Wilkinson’s hand, but that she “took it out of her hand.” The Respondent agreed that she wanted to finish discussing the matter with Wilkinson and have her attention. She denied that she felt that the only way she could do this was to take the cell phone away from Wilkinson, but that she took away the phone because she did not want anyone else involved. The Respondent acknowledged that she recalled having an official Department interview regarding the matter.

With regards to the escaped prisoner, the Respondent acknowledged that she was assigned to guard a hospitalized prisoner. She said that she did not check to see if the prisoner was properly secured in her handcuffs. The Respondent admitted that as a result, the prisoner was able to slip out of her handcuffs. Upon questioning by the Court, the Respondent explained that the prisoner pulled her hand out of the handcuffs because they were not tight enough. The Respondent admitted that she left the room to speak with the nurse and then the prisoner escaped. The Respondent acknowledged that she did not immediately transmit over the radio that the prisoner escaped, but instead tried to find her on her own. The Respondent agreed that she should have immediately called it in.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82064/06

The three specifications in this case stem from a CCRB complaint made against the Respondent’s partner, former Police Officer Monaco, and arose out of an event that allegedly occurred in the early hours of March 1, 2004. A civilian, Ballard, made the complaint on behalf of another person, Wong, who is a former traffic enforcement agent.

Monaco was described by name and badge number. The complainant also identified the vehicle used by Monaco and his black female partner as being RMP 1861.

The Respondent was called to an official interview at CCRB on September 8, 2004, not as a subject but merely as a witness. She was questioned about the alleged incident which apparently involved Monaco getting out of the vehicle and engaging in physical contact with Wong. The Respondent stated that she did not recall the incident. She indicated that her initial assignment that tour was in the 124 Room and then she was post changed to an RMP. When asked, she said the RMP was 1861.

The Respondent was unable to say how frequently she worked with Monaco and it was apparent from her answers that she did work with him sometimes but not on any kind of regular basis.

Some time prior to that interview, the Respondent's Activity Log, had been requested and sent to CCRB (DX 2). CCRB also requested Monaco's memo book, (DX 3). Apparently Monaco had been on patrol with another officer earlier in the evening of February 29, 2004. That officer made an arrest and was unavailable for further patrol duty. It was at that point that Monaco and the Respondent were paired up to go on patrol. The CCRB investigators noted that both memo books had a notation that they were on patrol in RMP 2064. It was also noted that the "2064" in each memo book had been written over an earlier notation of "1861." Because the investigators believed they had been given doctored memo books, they forwarded the matter to IAB.

The Respondent was interviewed by IAB on February 2, 2006. There was extensive discussion of the memo book entry regarding which RMP she was assigned to that tour. The Respondent claimed to have no independent recollection of the events of

that tour and said that she was relying on her memo book. She indicated that she had been assigned to the 124 Room but she also indicated that she was assigned to RMP 1861 at the beginning of her tour. With regard to the later notation that she was in RMP 2064, she at one point conceded that was a mistake and that she had in fact been in RMP 1861. However, on further questioning later in the interview, she reversed and said she was not in RMP 1861 but RMP 2064.

In an effort to clarify the situation the Respondent was called back for another official Department interview by IAB on March 3, 2006. At that interview the Respondent denied being in RMP 1861 and said she had been in RMP 2064.

At this trial the Respondent was again asked about her activities on the night of February 29, 2004 going into the morning of March 1, 2004. The Respondent again stated that she had no independent recollection of the events of that day and that any testimony about the events of that tour was based on her memo book. She denied any recollection of a confrontation between Monaco and Wong.

After hearing that other officers were in RMP 2064 that night, the Respondent conceded that she was not in that vehicle and that her entry, in which she wrote over "1861" with "2064," was in error. She also agreed that that is not the proper way to correct a memo book entry and that what she should have done was strike out the incorrect entry and write the correct entry directly above it.

Specification Nos. 1 and 3 are virtually the same. Each specification charges that the Respondent "provided an Activity Log containing a false entry to an individual known to this Department, during an official interview." Specification No. 1 relates to the IAB interview of February 2, 2006 while Specification No. 3 relates to the IAB

interview of March 6, 2006.

The evidence is clear that other officers were assigned to and working in RMP 2064 at the time in question. The Respondent and Monaco were in RMP 1861. The memo book entry is false. The Respondent is found Guilty of Specification Nos. 1 and 3.

Specification No. 2 is very different from the other two specifications in this case. It relates to the February 2, 2006 interview and alleges that when the Respondent was “questioned about the circumstances and facts surrounding an incident which occurred on 03/01/04, at approximately 0115 hours, (the Respondent) did not reveal her true involvement in such a manner as to obfuscate her involvement therein and impede the investigation.”

This specification goes beyond the memo book entries. It presupposes that the underlying incident of March 1, 2004 did in fact occur, that the Respondent had involvement in that incident and that she “obfuscated” that involvement.

There was precious little testimony about the 2004 incident at this trial and all of it was hearsay. There is certainly some circumstantial evidence to support the notion that an incident occurred between Monaco and Wong, that being that the complainant or complainants knew Monaco’s name, his shield number and an RMP number. They also knew that he had a black female partner, but did not have her name. On its face that seems to be very strong circumstantial evidence.

But there also appears to be problems with the underlying allegation. Wong apparently claimed that the black female officer⁵ conducted a computer inquiry and that officer said that it was okay to let him go based on that computer check. The Department confirmed that no such computer inquiry was made.

⁵ The Respondent is a black female officer.

One of the complainants also described the incident as occurring over a period of time that would have taken the incident beyond the Respondent's end of tour. That complainant also claimed that other RMPs responded. There is no evidence to support these claims. Hearsay testimony is permitted in this forum but caution must be used in drawing conclusions from hearsay and this case underscores why this is so. While there appears to be strong evidence that something occurred, there are also some unanswered questions.

In the end, we do not know what if anything occurred between Monaco and Wong on the morning of March 1, 2004. The Respondent is charged with "obfuscating her involvement" in that incident. The only involvement that we know of that this Respondent might have had was her alleged checking of Wong's name in the computer something that did not occur.

The only narrative of the alleged 2004 incident in the record of this case is found in the questions posed by Stefano in the Respondent's CCRB interview. That narrative does not involve any action by the Respondent at all. Indeed, the Respondent was brought to CCRB as a potential witness, not as a subject. So it is not clear just what involvement the Respondent was obfuscating. Her testimony about the incident itself was that she never saw such an incident which certainly could be true and which, if nothing else, is a denial.

Based on all of the above the Respondent is found Not Guilty of Specification No.

2.

Disciplinary Case No. 85501/09

The Respondent has pled Guilty to both specifications in this case.

Disciplinary Case No. 85669/09

The sole specification in this case alleges that the Respondent, “having become aware of an allegation of corruption or serious misconduct involving a member of the service, did fail and neglect to notify her Commanding Officer and/or the Internal Affairs Bureau Command Center as required.”

The salient facts here are not in dispute. A friend of the Respondent’s, Garnett, who is also a police officer, was the suspect in a stabbing that occurred at a party. The Respondent was not present at that party but apparently spoke on the telephone to Garnett sometime after the incident.

The Respondent was subpoenaed for an interview at the DA’s office. She appeared for that interview without counsel and was apparently cooperative with the ADA. The Respondent testified that the ADA told her that IAB knew everything about the case. She said the ADA also told her not to discuss the case with anyone because it was under investigation.

Sometime later, the Respondent had a conversation with Garnett. Garnett asked her if she knew anything about the fact that IAB was looking at her regarding the stabbing. The Respondent did not disclose any information to Garnett. The charge here relates to the Respondent’s alleged failure to notify IAB about this conversation.

The Respondent stated that she did not notify IAB because the ADA had told her that IAB knew everything about the investigation and that she was also instructed not to say anything about the case. The Respondent said she was following those instructions.

Certainly an instruction from an ADA not to discuss a case creates something of an issue. It is however unnecessary to explore that issue. Patrol Guide section 207-21,

under which the Respondent is charged, provides that a member of the service must make a report to IAB “upon observing or becoming aware of corruption or other misconduct or upon receiving an allegation of corruption or other misconduct involving a member of the service.”

The information conveyed to the Respondent was not an allegation of misconduct. Garnett merely told her that she thought IAB was looking at her. She did not admit to any misconduct and indeed Garnett was apparently never charged with any misconduct in relation to the stabbing.

The Respondent is found Not Guilty of this specification.

Disciplinary Case No. 85886/09

The sole specification in this case alleges that the Respondent, while off-duty and “during a verbal dispute with Colleen Wilkinson, did grab a cellular phone out of Colleen Wilkinson’s hand.”

Wilkinson did not testify in this case. She did not make the original complaint. No arrest was made. No injuries are alleged. No damage to property is alleged. At the time of the incident Wilkinson was not calling for help.

The Respondent indicated that she and Wilkinson had been dating and that she was in the process of breaking up with her. Wilkinson was apparently not paying attention as she was talking on the telephone and the Respondent grabbed it from her. That is apparently the entirety of the incident.

There is no question that off-duty misconduct can be the subject of Departmental disciplinary charges. Certainly the Department has every reason to be concerned about assaultive or other criminal conduct by members even while off-duty. The action of the

Respondent here, while perhaps impolite, simply does not rise to the level of actionable misconduct.

It is recommended that this specification be dismissed.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on July 1, 2002. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of submitting an Activity Log containing a false entry on two separate occasions at official Department interviews at IAB. She has also pled Guilty to losing a hospitalized prisoner and delaying the reporting of that event.

Charging the Respondent with submitting a false Activity Log twice is certainly redundant. Once the Respondent had altered the memo book she had no alternative but to submit it. Once she submitted it at the first official Department interview she had no choice but to submit it again at the second. The problem here is that the Respondent tampered with the memo book at all.

As noted earlier, CCRB forwarded the memo books of the Respondent and Monaco to IAB because they believed they had been doctored to provide some kind of alibi for Monaco. They did this, as Stefano indicated, in spite of the fact the Respondent testified honestly at her CCRB interview about which vehicle she had been in.

Both memo books originally had the correct RMP number, the one provided by

the complainant, written over with the incorrect RMP number. The clumsiness of this falsification in both memo books is stunning as the original, correct, entry can clearly be seen. Nevertheless, the overwriting is certainly strong circumstantial evidence that the Respondent engaged in this act of misconduct, probably, to somehow help Monaco.

The Department has recommended that the Respondent be dismissed from her position as a police officer. It could be argued that charges in Disciplinary Case No. 82064/06, related to that memo book falsification, might justify such a penalty, but there are strong indications that that is not an appropriate penalty in this case.

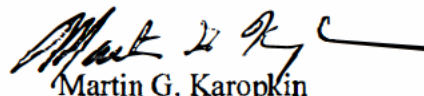
First is the fact that the falsified memo book was submitted to CCRB roughly six years ago, in March 2004, and although the official interviews that commenced these charges occurred over four years ago, the Respondent has never been placed on modified assignment. The only interruption in her full duty status occurred when she was suspended in the incident concerning the lost prisoner in May 2009 and even after that she was restored to full duty.

At the time of the original incident, the Respondent had less than two years on the job, she now has just under eight years on the job. Her arrest activity and evaluations indicate that she has been and continues to be a valued member of the service.

It would also appear that in this instance the Respondent has learned from her experience. She appears to have been fully candid about the cell phone incident with Wilkinson, and the conversation with Garnett. Indeed it appears that she is the sole source of information about that conversation. She also seems to have handled the conversation with Garnett properly by not disclosing her knowledge of the investigation.

Accordingly, this Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time she remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. It is further recommended that the Respondent forfeit the 17 days she served on pre-trial suspension and that she also forfeit 23 vacation days, for a total forfeiture of 40 days.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner Trials

APPROVED
DEC 14 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

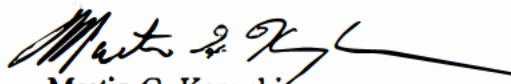
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER FELICIA SIMON
TAX REGISTRY NO. 929459
DISCIPLINARY CASE NOS. 82064/06, 85501/09, 85669/09 & 85886/09

In 2008 and 2009, the Respondent received an overall rating of 3.5 “Highly Competent/Competent” on her annual performance evaluation. She was rated 4.0 “Highly Competent” in 2007. In her eight years of service, she has effected 238 arrests (44 felonies, 169 misdemeanors, 16 violations, 9 infractions). She has been awarded six medals for Excellent Police Duty. [REDACTED]

[REDACTED] The Respondent has no prior formal disciplinary record. Based on her overall record, she was placed on Level-II Discipline Monitoring in March 2008. There is no record of CCRB complaints.

For your consideration.


Martin G. Karopkin
Deputy Commissioner – Trials